

NOT FOR PUBLICATION IN WEST'S BANKRUPTCY REPORTER

In re Davis, Case No. 04-01018.

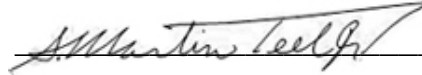
Decided November 12, 2004.

"Order Dismissing Objection to Claim . . ."

It is hereby
ORDERED that the Order set forth below is
hereby signed as an order of the court to be entered
by the clerk.



Signed: November 12, 2004.


S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
ELIZA DAVIS,)	Case No. 04-01018
)	(Chapter 7)
Debtor.)	

ORDER DISMISSING OBJECTION
TO CLAIM AS MOOT AND CAUTIONING
CREDITOR NOT TO FILE CLAIMS OVER-STATING THE
VALUE OF ITS COLLATERAL AND FAILING TO INDICATE
WHETHER ANY UNSECURED PORTION IS A CLAIM AGAINST THE ESTATE

The chapter 13 trustee objected to the \$21,620.63 secured claim of Mazda American Credit on the basis that the claim asserted a value of the collateral equal to the full amount of the claim, far in excess of the value listed on the debtor's schedules B (personal property) and F (secured claims). However, the trustee seeks to disallow the claim *in toto* despite the debtor's having scheduled the collateral as worth \$8,180.

There simply is no basis for entering such an order. The chapter 13 trustee may be frustrated with secured creditors

who routinely over-value their collateral as equal in value to the amount of their claim, but Rule 9011 provides the appropriate avenue for addressing that concern, and Rule 9011 has not been properly invoked here.

Although Rule 9011 permits the court to sanction a creditor for filing a blatantly erroneous valuation of its collateral, the proper course is to serve a motion on the creditor in accordance with Rule 7004. See Rule 9011(c)(1)(A). Here the trustee effectively sought sanctions as part of her objection to the claim instead of by way of a separate motion as required by Rule 9011(c)(1)(A).

Finally, under Rule 9011(c)(2), any sanction imposed "shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." The court does not believe that a disallowance of the **entire \$8,180 portion of the claim that was actually secured** would be an appropriate sanction.

The court itself can enter an order under Rule 9011(c)(1)(A) directing the creditor to show cause why sanctions ought not be imposed. However, the court declines to do so because the proof of claim is moot and because the issue can be re-visited anew if the creditor is actually engaged in a practice in bankruptcy cases of over-valuing

collateral as equal to the amount of its claim.

The chapter 13 trustee's objection to the claim is moot. No chapter 13 plan was confirmed, and thus the chapter 13 trustee is not in need of an order fixing the actual secured amount of the claim. Moreover, the creditor has obtained relief from the automatic stay. Finally, the case is now in chapter 7, and (in contrast to a chapter 13 trustee who may be required to pay allowed secured claims under a confirmed plan without the collateral having been reduced to proceeds), the chapter 7 trustee will pay any secured claims, if he pays them at all, only out of the proceeds of collateral, not based on proofs of claim without the collateral having been sold.

It would be inappropriate to find that Rule 9011 was violated (because the creditor has not been given an opportunity to respond). Nevertheless, the court can serve a friendly caution to the creditor that, if the trustee is correct that the claim was vastly over-valued, the creditor ought not engage in that type of conduct in the future.

Moreover, when a partially secured creditor files a proof of claim as only a secured claim, the court is left to guess whether any unsecured portion is actually an allowed claim against the debtor's bankruptcy estate. For example, the claim, to the extent it exceeds the value of the collateral,

may not be an allowed unsecured claim against the bankruptcy estate if:

(1) the debtor received a discharge of the claim in a prior bankruptcy case, or

(2) the debtor posted the collateral but did not obligate herself on the debt, or

(3) the debtor and the secured creditor have otherwise agreed that only another entity shall be the party personally obligated to pay the debt.

Mazda American Credit's proof of claim nowhere claims that any unsecured portion of the debt is entitled to be allowed as an unsecured claim against the estate. The consequence is that when the court enters an order disallowing the unsecured claim as a secured claim against the collateral, the proof of claim would not enable the court in the same order to allow the unsecured portion of the claim as a claim against the estate. Having to file an amended proof of claim to assert the unsecured portion of the claim as a claim against the estate would expose the creditor to the risk of plan payments having been completed and the case closed before the amended proof of claim was actually filed!

In light of the foregoing, it is

ORDERED that the chapter 13 trustee's objection to claim

is dismissed as moot without adjudicating the merits of the objection. It is further

ORDERED that Mazda American Credit is cautioned that if it over-valued its collateral on its proof of claim, it ought to refrain from over-valuing its collateral on proofs of claim in future bankruptcy cases, and that it will face sanctions under Rule 9011 if it does so. It is further

ORDERED that Mazda American Credit is cautioned that by its proof of claim stating that its collateral fully secures its claim, and without indicating that any unsecured portion of the claim is a claim against the estate, Mazda American Credit is foregoing distributions pursuant to the proof of claim for whatever portion of its claim is unsecured.

[Signature appears above.]
S. Martin Teel, Jr.
United States Bankruptcy Judge

Copies to:

Cynthia A. Niklas, chapter 13 trustee

Kevin R. McCarthy, chapter 7 trustee

Mazda American Credit
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Franklin, TN 37068-0170

Office of U.S. Trustee

End of Order